

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GEORGE LUSTER,

Plaintiffs,

vs.

WARDEN JAMES SCHOMIG, et. al.

Defendants.

Case No. 2:04-cv-00281-LRH-LRL

MOTION FOR ENLARGEMENT OF TIME
AND ORDER

DEFENDANTS, WARDEN JAMES SCHOMIG, et. al., by and through counsel, CATHERINE CORTEZ MASTO, Nevada Attorney General, and JEFFREY W. MESSMORE, Deputy Attorney General, hereby file this Motion for Enlargement of Time (First Request) to submit a Pretrial Order in the above-referenced matter. This Motion is brought pursuant to Fed.R.Civ.P. 6(b), LR 6-1 and LR 6-2, the attached Points and Authorities, and the papers and pleadings on file with the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff commenced this action by filing a Complaint on March 10, 2004, which was dismissed by this Court on January 28, 2004 (Court Docket (hereinafter "CD") #8). Plaintiff subsequently appealed the decision (CD#9) and on December 8, 2005 the Ninth Circuit Court

1 of Appeals reversed the dismissal and remanded the case in order to allow Plaintiff to pursue
2 his claim.

3 On or about October 18, 2007 this Court issued a Scheduling Order in this matter,
4 ordering among other things, that a Proposed Joint Pretrial Order is due March 14, 2008
5 (CD#76). The Plaintiff in this matter is a *Pro Se* inmate currently incarcerated in High Desert
6 State Prison.

7 The Deputy Attorney General now assigned to this case, Jeffrey W. Messmore, has
8 only very recently began employment with the Attorney General's Office and has not had
9 sufficient opportunity to review the case file, prepare a Proposed Joint Pretrial Order and
10 communicate with the Plaintiff regarding the same.

11 **II. ARGUMENT**

12 FED. R. CIV. P. 6(b)(1) provides, in pertinent part:

13 When by these rules or by notice given thereunder or by the order of court an
14 act is required or allowed to be done at or within a specified time, the court for
15 cause shown may at any time in its discretion;

16 (1) with or without motion or notice order the period enlarged if request
17 therefore is made before the expiration of the period originally
18 prescribed or as extended by a previous order.

19 Fed.R.Civ.P. 6(b)(1) allows a party to move for, and the Court to grant, an enlargement
20 of time. Judges have wide discretion in managing their dockets. See *Hernandez v. City of El*
21 *Monte*, 138 F.3d 393, 399 (9th Cir. 1998); see also Fed. R. Civ. P. 6(b) (advisory committee
22 note, 1946) ("Rule 6(b) is a rule of general application giving wide discretion to the court to
23 enlarge these time limits or revive them after they have expired...").

24 Since inheriting the present case, in addition to numerous additional cases, the
25 undersigned Deputy has been familiarizing himself with this file. See Affidavit of Jeffrey W.
26 Messmore, attached hereto as Exhibit "A." As such, this Deputy has not had sufficient time to
27 draft the Proposed Joint Pretrial Order and submit the same to the Plaintiff for his review and
28 signature. (*Id.*) This Deputy anticipates sending a proposed draft to the Plaintiff within the
next five (5) days for his review. (*Id.*)

1 Due to having to review the entire file, draft a Proposed Joint Pretrial Order and
2 coordinate with an incarcerated *Pro Se* inmate on the drafting of such Order, counsel
3 respectfully requests a thirty (30) day enlargement of time in which to file a proper Proposed
4 Joint Pretrial Order, thus extending the deadline to file the Proposed Joint Pretrial Order from
5 March 14, 2008, up to, and including April 14, 2008. This request is made in good faith and
6 not for the purposes of delay. (*Id.*)

7 As there has been no prejudice to Plaintiff, Defendants respectfully request the Court
8 enlarge the time by which they must file their Joint Pretrial Order. Therefore, it is respectfully
9 requested that the Court enlarge the time to file the Proposed Joint Pretrial Order.

10 **DATED** this 14th day of March, 2008.

11 Respectfully submitted,

12 CATHERINE CORTEZ MASTO
13 Nevada Attorney General

14 By: /s/ JEFFREY W. MESSMORE
15 JEFFREY W. MESSMORE
16 Deputy Attorney General
17 Public Safety Division

18 **ORDER**

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20 IT IS SO ORDERED:

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24 LARRY R. HICKS
25 UNITED STATES DISTRICT JUDGE

26 DATED: April 22, 2008
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CERTIFICATE OF SERVICE

I, Sharlene Marschall, hereby certify that I am an employee of the Office of the Attorney General and that on the 14th day of March, 2008, I served the foregoing **MOTION FOR ENLARGEMENT OF TIME (First Request)**, by causing a true copy thereof to be filed with the Clerk of the Court using the CM/ECF system, and by delivering to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof addressed to:

GEORGE LUSTER, #57587
HIGH DESERT STATE PRISON
HDSP P.O. 650
INDIAN SPRINGS, NV 89018
PRO SE

/s/ Sharlene Marschall
An employee of the Office of the Attorney General

EXHIBIT A

EXHIBIT A

AFFIDAVIT OF JEFFREY W. MESSMORE

STATE OF NEVADA)
) ss:
 COUNTY OF CLARK)

I, JEFFREY W. MESSMORE, being first duly sworn under oath, depose and state as follows:

1. I am an attorney licensed to practice law in the State of Nevada; that I am qualified and admitted to practice before this Court; and that I am employed as a Deputy Attorney General in the Office of the Nevada Attorney General in the Litigation Division and pursuant to that employment, I have been assigned to represent the Defendants in the matter entitled *George Luster v. Warden James Schomig, et. al.*, United States District Court, District of Nevada, case number 2:04-cv-00281-LRH-LRL; and as such, have personal knowledge of the matters contained herein.

2. Your affiant is newly employed as a Deputy Attorney General with the Office of the Attorney General, State of Nevada, and as such, was very recently assigned the responsibility of being sole Defense Counsel on this case, along with several other cases.

3. This Court previously ordered a Proposed Joint Pretrial Order filed with this Court by March 14, 2008. That due to only recently being employed with the Office of the Attorney General, State of Nevada coupled with the fact that Plaintiff is a *Pro Se* inmate housed in High Desert State Prison, the Affiant did not have sufficient time to draft and coordinate the Plaintiff's review and signature of the Pretrial Order.

4. That your affiant anticipates sending a Proposed Joint Pretrial Order to the Plaintiff within the next five (5) days for his review, input and signature.

5. That this request for an enlargement of time is made in good faith and is not made to prejudice the Plaintiff in any way.

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1 6. That thirty (30) days are required to conduct necessary legal research, case
2 evaluation, and communication with the Plaintiff in order to complete the Pretrial Order and
3 Motion for Summary Judgment.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

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12 JEFFREY W. MESSMORE

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SUBSCRIBED and SWORN to before me
this 14th day of March, 2008.



NOTARY PUBLIC in and for said
County and State

